

**SB72 – Repeal prohibition on political party endorsements and expenditures for Judicial Candidates**

**EXHIBIT**

**DATE**

2/11/15

**SB**

72

**PROBLEM:**

Montana Law has long banned political parties from endorsing Judicial Candidates, or spending money in Judicial races. However, now a portion of that Montana Law does not conform with the recent 9<sup>th</sup> Circuit judgment that struck down our ban on political party endorsement and expenditures in Judicial Candidate races. Our MCA code is now inaccurate and misleading.

**HISTORY:**

In May of 2012 the Sanders County Republican Central Committee challenged Montana's long standing (since 1935) prohibition of political party involvement in Montana's judicial elections. (§13-35-231 MCA)

The U.S. District Court for the State of Montana denied the challenge, but on September 17, 2012 the US Court of Appeals for the 9th Circuit reversed and struck down portions of §13-35-231 MCA. (Sanders County v. Bullock 698 F.3d 741; 2012 U. S. App. LEXIS 19522.)

On June 21, 2013 the 9th Circuit clarified that its earlier Decision struck down the §13-35-231 MCA "ban on [political party] endorsements and expenditures" but left intact the "contribution" ban. (Sanders County v. Fox 717 F3d 1090; 2013 U.S. App. LEXIS 12755)

The U.S. Supreme Court denied review (certiorari) on February 24, 2014 so the 9th Circuit's Decision is now law.

**Solution:**

SB 72 adjusts the language of §13-35-231 MCA to comply with the 9th Circuit's Decisions.

SB 72 does this (on Line 25, Line 29, and Line 30) by removing the §13-35-231 MCA ban on political party endorsement and (on Line 30) removing expenditures in judicial elections,...but leaving in place the ban on political party contributions (Line 25, and Line 29) to judicial candidates.

This adjustment is necessary so that the public has an accurate version of §13-35-231 MCA before it. An accurate, published version of §13-35-231 MCA lessens confusion and promotes a shared understanding of what is, or is not, allowed as to political party involvement in Montana judicial elections.

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